



Sponsor:

APRIL 24th DRAFT

DELAWARE STATE _____

____GENERAL ASSEMBLY

_____BILL NO.

AN ACT TO AMEND TITLE 29 OF THE DELWARE CODE RELATING TO THE TRANSFER OF DEVELOPMENT RIGHTS AND THE CREATION OF COMMUNITY DEVELOPMENT DISTRICTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE

1 Section 1. This Act shall be known as "The Transfer of Development Rights and Special
2 Development District Act."

3 Section 2. Amend Chapter 91 of Title 29 of the Delaware Code to provide for a new
4 Subchapter III to read as follows:

5
6 “Subchapter III. Transfer of Development Rights and Banking Program”
7

8 §9131. Findings and Purposes.

9 The General Assembly finds that a critical need exists to provide for orderly growth that
10 maintains a desirable quality of life, to encourage well-designed and efficient communities rather
11 than inefficient sprawl, to preserve farmland, cultural and historic lands, and other sensitive lands
12 identified by the State and local governments, and to assist in the creation and maintenance of a
13 market for the sale and purchase of development rights. The adoption of a transfer of
14 development rights and banking program that encourages and facilitates the voluntary
15 participation of county and municipal governments is a means of achieving those objectives. It is
16 the purpose of this Subchapter to establish the framework, guidelines and incentives for the
17 adoption of transfer of developments rights programs by Counties and Municipalities that serve

to direct growth and development to areas having adequate infrastructure to accommodate such growth and development, while providing permanent protection to valuable agricultural lands, open space, cultural and historic lands, and critical and sensitive areas. This subchapter also creates a mechanism by which local governments can finance infrastructure.

§9132. Definitions.

For purpose of this Subchapter the following definitions shall apply:

(a) 'Bank' shall mean the depository for TDR Units, which are purchased or received by the Board;

(b) 'Board' shall mean the TDR Banking Board established by each County under this Subchapter;

(c) 'Special Development District' or 'SDD' or 'District' means one or more parcel(s) of land so designated by a Local Government pursuant to the provisions of this Chapter. Parcels of land in a District need not be contiguous, but they must all be located within the same Local Government.

(d) 'County' shall mean any county in Delaware; namely, New Castle County, Kent County or Sussex County;

(e) 'Delaware Agricultural Lands Preservation Program' shall mean the program established and operated by the Foundation pursuant to the provisions of 3 Del. C. Chapter 9;

(f) 'Development Unit' shall mean a residential dwelling unit or defined equivalent for nonresidential uses;

(g) 'Foundation' shall mean the Delaware Agricultural Lands Preservation Foundation;

(h) 'Guideline' shall mean the substantive provisions adopted by a Board after consultation with Counties and Municipalities and after public hearings to be used by Municipalities and Counties in:

(1) developing the criteria for determining and utilizing TDR Units; and

(2) adopting provisions for operation of a TDR Program subject to this

Subchapter.

(i) 'Municipality' shall mean a municipal government established by the State of Delaware and having defined geographic boundaries.

(j) 'Non-Residential Use' shall mean a commercial, industrial, or other urban land use that does not involve the construction of residences for human habitation and not waived under the provisions of §9133, (a), (8) of this Title.

(k) 'Preservation District' shall mean an agricultural preservation district as referenced in Subchapter II of Chapter 9, Title 3 of the Delaware Code.

(l) 'Preservation Easement' shall mean an easement as defined in 3 Del. C. §902(11).

(m) 'Receiving Parcel' shall mean the parcel of land that is subject to the transfer of TDR Units, and for which the owner of the parcel is entitled to an increase in development density.

(n) 'Sending Parcel' shall mean the parcel of land from which TDR Units are obtained and use restrictions are imposed.

(o) 'TDR' shall mean transfer of development rights.

(p) 'TDR Unit' shall mean a residential development unit or equivalent in accordance with the local government's TDR program, which is acquired from the Bank or from a private property owner and utilized by the owner of the Receiving Parcel to increase development density. A TDR unit shall equal one residential unit. The bank board for each County, as enabled by this subchapter, shall determine the conversion value of a TDR unit that is to be used for non-residential density transfers, which shall be between 3,000 to 6,000 square feet of building space per acre of restricted land.

(q) 'Vacant or Undeveloped Land' shall mean lands that are currently open, fallow, in agricultural use, or otherwise not fully utilized for residential, commercial or other urban land uses.

§9133.County and Municipal Authorization.

(a) Notwithstanding any provision of the law to the contrary, each County, and each Municipality prior to any annexation action, shall adopt as part of its Comprehensive Development Plan and subsequent land use ordinances developed pursuant to the requirements

of Titles 9 or 22, and certified pursuant to Title 29, Chapter 91 of the Delaware Code, a TDR program which at a minimum.

(1) Establishes the criteria for determining the number of TDR Units available on each Sending Parcel or part thereof, so that the available number of TDR Units for a parcel can be readily calculated.

(2) The number of TDR Units available from a parcel shall be determined by the bank board in each County as established by the County TDR program, as enabled by this Act.

(3) No action taken by the County or Municipality shall result in an effective downzoning as a result of activities related to the TDR program.

(4) Any land parcel(s) annexed into a municipality which is vacant or undeveloped and larger than ten acres and/or five lots shall become a receiving parcel(s). Parcels shall be annexed at existing county residential density. Projects that are intended to be primarily non-residential in nature may be placed into an appropriate non-residential zoning district upon annexation.

(5) Any parcel(s) which are part of a certified municipal annexation area, if developed by a county, shall become receiving parcel(s).

(6) The transfer of TDR Units to parcels in areas designated by the Office of State Planning Coordination as Investment Level 4 shall not be permitted unless the area becomes a designated growth area pursuant to a certified local government comprehensive plan.

(7) As part of each receiving parcel(s), a property owner or owners must purchase or otherwise obtain TDR's so that overall density of property in the District shall increase over the base gross density by at least 2 residential units per acre and shall be at least 4 residential units per acre for the residential portion of the receiving parcel(s). The property owner or owners must purchase or otherwise obtain TDRs so that at least two TDR units are utilized per acre for any non-residential portion of the receiving parcel(s). TDR's may be obtained through Subchapter III hereof, or by private purchase, provided that if by private purchase, the property transferring development rights is restricted by preservation easement duly recorded in the appropriate Recorder of Deeds' Office in

109 accordance with the applicable rules and regulations of the Local Government in
110 which the receiving parcel(s) are located. The restricted property need not be in
111 the same jurisdiction as the receiving parcel(s).

112 (8) Lands in municipal annexation areas or designated as receiving parcel(s) in
113 county jurisdictions are exempt from the requirement to utilize TDRs if the use of
114 the property is to be open space; recreational facilities; state, county or municipal
115 buildings or facilities; utility facilities or structures (including substations);
116 schools; hospitals; and/or related public or private facilities essential to the public
117 health, safety and welfare of the community.

118 (b) Any TDR program which is adopted by a County or Municipality as part of a
119 Comprehensive Development Plan and subsequent land-use ordinance pursuant to the
120 Land Use Planning Act, Chapter 92 of Title 29, shall be subject to review for consistency
121 with the Guidelines under the provisions of Subchapter I of Chapter 91, Title 29 of the
122 Delaware Code.

123 (c) Any County or Municipality operating a certified TDR program which allows for
124 Receiving Parcels within its jurisdiction, shall receive from the Board (or Foundation or
125 other private non-profit entity as the case may be), at the time of transfer and final
126 approval of use of TDR Units to an approved project, in the County or Municipality as
127 the case may be, an amount equal to ten percent (10%) of the proceeds received by the
128 Board from the sale of the TDR Units by the Board. In the case of a private transfer of
129 TDR units not involving the TDR Bank, the County or Municipality shall receive ten
130 percent (10%) of the fair market value as established by the Board's appraisal criteria.
131 This amount shall be paid by the receiving entity. Said monies shall be used by the
132 County or Municipality for new infrastructure improvements and municipal services
133 demanded by the new higher density development of the Receiving Parcel.

134 (d) The use of TDR Units on any Receiving Parcel shall be subject to compliance with
135 all other applicable federal, state and local requirements, provided however, that no
136 separate or conditional or discretionary approval shall be required with respect to the
137 application of TDR Units in accordance with a TDR program.

138 (e) In special circumstances a waiver from the requirements of §9133 (a), (7) of this
139 chapter for a particular project or parcel may be granted by the Cabinet Committee on

State Planning Issues and the legislative body of the local government. In the case of parcels proposed for annexation, the local government shall be that of the municipality that is considering the annexation request. These circumstances may include, but are not limited to, projects which will provide an extraordinary benefit to the State and the local jurisdiction through economic development, job creation, educational opportunities, public services or facilities, agricultural preservation or protection and enhancement of the natural environment. In order to grant such a waiver, a simple majority of both the Cabinet Committee on State Planning Issues and the legislative body of the local government must vote affirmatively for the requested waiver. Upon granting such a waiver, both the Cabinet Committee and the local legislative body shall provide the applicant a written notice which shall include an explanation of the findings and reasoning which led to the approval of the waiver.

§9134 Private TDR Transactions

- (a) Nothing in this title shall be construed to prohibit the private sale of Transfer of Development Rights credits between willing buyers and willing sellers. Private TDR transactions are not required to utilize any TDR banking program established under this title.
- (b) All private transactions shall adhere to requirements of the relevant local government's TDR program and ordinances.
- (c) TDR credits purchased from a private property owner may not be resold or sold to other third parties.

§9135. TDR Banking Board.

- (a) Each County may establish a TDR Bank and a TDR Banking Board. In lieu of establishing a TDR Banking Board, a County may authorize the Foundation or other non-profit entity to administer the TDR program in accordance with §9139 of this subchapter.
- (b) Should a County establish a Board, the Board shall have at least 7 but no more than 9 members, and shall include at least one member or representative as follows:

- (1) A representative from the Office of State Planning Coordination shall serve as an ex-officio member, to be selected by the Governor;

171 (2) An active, full-time farmer land-owner nominated by the County Farm
172 Bureau;

173 (3) A representative of the home building industry, to be nominated by
174 the Delaware Homebuilders Association from the county establishing the Board;

175 (4) A representative of the Delaware League of Local Governments, to be
176 selected by the Delaware League of Local Governments from the county
177 establishing the Board;

178 (5) A representative from the Delaware Agricultural Lands Preservation
179 Foundation, to be selected by the Secretary of Agriculture.

180 (c) Each Board shall be empowered:

181 (1) To adopt procedural rules to conduct its affairs and carry out and
182 discharge its powers, duties, functions, and select a chairperson.

183 A simple majority of the Board shall be required for all actions by the
184 Board. Two-thirds of the total members of the entire Board shall constitute a
185 quorum.

186 (2) To adopt substantive rules and regulations, after public hearing and in
187 accordance with the Delaware Administrative Procedures Act, Title 29, Chapter
188 101, to carry out and discharge its powers, duties and functions.

189 A simple majority of the Board shall be required for all actions by the Board.

190 (3) To enter into agreements for consultant, appraisal, legal, accounting,
191 audit and other services deemed advisable or necessary in the exercise of its
192 purposes and powers and upon such terms as it deems appropriate, subject to
193 available funding.

194 (4) To establish the criteria for the purchase and sale of TDR Units,
195 which may include transactions that do not involve the TDR Bank.

196 (5) To purchase or receive, by gift or otherwise, and retain if desired,
197 TDR Units under such terms and conditions deemed appropriate.

198 (6) To sell TDR Units under such terms and conditions as deemed
199 appropriate.

200 (7) To develop and utilize documents as desirable or necessary to engage
201 in TDR transactions.

(8) To enter into agreements with Counties and Municipalities, State agencies, Authorities, Foundations and instrumentalities of the State and adopt guidelines for participation and operation of the TDR program.

(9) To receive, deposit, withdraw and expend monies from dedicated State accounts for the purpose of engaging in and completing TDR transactions, including the payment of transaction costs related thereto.

(10) To establish use restrictions on Sending Parcels as deemed desirable and necessary, which restrictions shall not, at a minimum, prohibit any agricultural uses, including but not limited to crops or the breeding and boarding of horses.

(11) To do all acts and things reasonable and necessary or convenient to carry out its functions and operations of the TDR and Bank program.

(d) Each Board shall act in accordance with adopted local land use plans and ordinances.

(e) The members of a Board shall receive no compensation from the Bank but may be reimbursed for travel, out of pocket expenses, and other expenses related to the performance of duties as Board members at the established federal rates.

(f) Term lengths for members of a Board shall be established by each County, but no term shall be more than three years and no Board member shall serve for more than six consecutive years.

§9136. Reports.

Each Board shall make an annual report to the Governor, the General Assembly, and local jurisdiction setting forth its operations and transactions, and may make such other additional reports from time to time as it desires.

§9137. Tax Status.

(a) The powers and functions exercised by a Board are and will be in all respects for the benefit of the people of the State. A Board will exercise essential governmental functions. To this end no Board shall be required to pay any taxes on assessments or charges of any character, including, without limitation, real property taxes, real estate transfer taxes, taxes on any of its property used, leased or exchanged, or any income or revenue derived from its activities,

including, without any limitation, any profit from any sale or exchange of TDR Units. Nothing in this section shall be construed to mean that a tax parcel resulting from a TDR unit, once recorded, is exempt from taxes.

(b) There shall be no real estate transfer tax levied on the purchase, transfer, exchange or sale of any TDR Unit.

(c) Land subject to a preservation easement shall be taxed according to the farmland assessment provisions codified in 9 Del. C. §8335, or its successor.

(d) There shall be no recording fee or cost charged for the recording of documents relating to the transfer of TDR units from Sending Parcels.

(e) The Tax Assessment Office, the Planning and Zoning Offices and the Recorder of Deeds office for each County shall cooperate and assist each Board and the Foundation in effectuating the provisions of this Subchapter.

§9138. TDR Bank.

(a) Except for private, property owner to property owner transactions, all TDR Units acquired by purchase, transfer, donation or otherwise shall be held in the TDR Bank for sale and use in TDR programs adopted by Counties and Municipalities under this Subchapter.

(b) The proceeds from the sale of TDR Units shall, after payment to Counties and Municipalities as provided in §9133(c) above, be used to purchase TDR Units and pay for the transaction costs related thereto.

(c) TDR Units may be transferred within any part of the same County (and/or any Municipality in the County). For Municipalities located in more than one County, TDR Units may be transferred from either County into any part of the Municipality only with county to county agreements.

(d) TDR Units shall be sold on a 'first come/first serve' basis. At the time of purchase, the purchaser shall designate the Receiving Parcel or Receiving Parcels for which the TDR Units are intended. Unused TDR Units purchased from a Bank may be resold back to a Bank at their original purchase price (and the Bank shall repurchase the same) and may not be resold or sold to other third parties or transferred to other parcels not identified at the time of the original purchase.

264
265 §9139. Administration of Voluntary TDR Program and Banking System

266 (a) The administration of the TDR bank and voluntary program may be conducted in lieu
267 of a Board: (i) by the Foundation under the terms and conditions of a Memorandum of
268 Agreement between the County and the Foundation; or (ii) by another non-profit entity selected
269 by a County, under the terms and conditions of a Memorandum of Agreement between the
270 County and such entity and provided such entity is approved by the Office of State Planning. In
271 the event a non-profit entity administers the TDR bank, the portion of the meetings of the board
272 of directors or other governing body of such entity dealing with the TDR program shall be open
273 to the public as if the entity were subject to Chapter 100 of this Title.

274 (b) The Foundation, Board or other authorized non-profit entity as the case may be shall
275 be authorized and responsible for monitoring compliance and enforcing use restrictions imposed
276 on Sending Parcels to the same extent that the Foundation is authorized to enforce, take action,
277 and impose penalties for violations of restrictions under the provisions of 3 Del. C. §920(a) and
278 (b).

279 (c) The sale and purchase of TDR Units shall be on a voluntary basis, and the
280 Foundation, Board or other authorized non-profit entity, as the case may be, acting on behalf of
281 the Board, shall not be required to purchase TDR Units from eligible landowners. Eligible
282 landowners shall not be required to sell TDR Units to the Board, or to the Foundation or other
283 authorized non-profit entity acting on behalf of the County.

284 (d) A Board may join with the Foundation and/or the Open Space Council in the
285 funding of purchases of both TDR units under this Subchapter, and Preservation Easements
286 under the Foundation's purchase program.

287 (e) In the event that a property on which a TDR preservation easement exists is
288 incorporated in a designated growth zone in a certified county or municipal comprehensive plan,
289 or is designated as Investment Level 1, 2 or 3 as part of a future update of the Strategies for State
290 Policies and Spending, the property owner may petition the board to re-purchase their
291 development rights. The bank shall be obligated to sell the development rights back to the
292 property owner at the market value of the TDRs on the date of repurchase. This section shall not
293 be construed to allow the property owner to purchase the development rights back at the original
294 price.

295
296 §9140. Additional Benefits.

297 Municipalities and Counties with TDR programs certified pursuant to 29 Del. C. §9103(f) shall
298 be entitled to seek priorities in participation in available State grant and funding programs,
299 including programs which provide local assistance for infrastructure improvements.

300
301 §9141. Saving.

302 (a) Transfer of development rights programs adopted by Municipalities and Counties and
303 existing at the time of enactment of this Subchapter shall remain in force and effect until
304 modified or abolished, and any transaction, determination or approval which has occurred or
305 which may occur in the future involving an existing transfer of developments rights program
306 shall not be affected by this Subchapter.

307 (b) The provisions of this Subchapter and any TDR program adopted by a County or
308 Municipality shall have no effect on the right of such property owner to develop the property
309 consistent with relevant codes and ordinances governing land use and development.

310 (c) any provision of this Subchapter or the application thereof to any person or
311 circumstance is held invalid, such invalidity shall not affect other provisions or applications of
312 the Subchapter which can be given effect without the invalid provision or application, and, to
313 that end, the provisions of this Subchapter are declared to be severable."

314
315 Section 3. Amend Chapter 91 of Title 29 of the Delaware Code to provide for a new
316 Subchapter IV to read as follows:

317
318 "Subchapter IV. Special Development Districts"

319
320 §9150. Findings and Purposes.

321 The General Assembly finds that in order to better coordinate development, encourage well-
322 designed and efficient communities rather than inefficient sprawl, and to better provide for
323 infrastructure needed for development, a better mechanism needs to be created for the
324 coordination between the state, local governments, and local property owners. Special

Development Districts are hereby authorized pursuant to the terms and conditions of this Chapter.

§9151. Definitions.

For purpose of this Subchapter the following definitions shall apply:

(a) 'Bonds' or 'bond' means a special obligation bond, revenue bond, note or other similar instrument issued by any county or municipality in accordance with this section.

(b) 'Special Development District' or 'SDD' or 'District' means a parcel or parcels of land so designated by a Local Government pursuant to the provisions of this Chapter. Parcels of land in a District need not be contiguous, but they must all be located within the same Local Government.

(c) 'Cost' or 'Costs' includes the cost of:

(1) Construction, reconstruction and renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests acquired or to be acquired by a municipality for a public purpose;

(2) All machinery and equipment including machinery and equipment needed to expand or enhance municipal services to the Special Development Districts created pursuant to § 9152 of this title;

(3) Financing charges and interest prior to and during construction, and, if deemed advisable by the municipality, for a limited period after completion of the construction, interest and reserves for principal and interest, including costs of municipal bond insurance and any other type of financial guaranty, liquidity support and costs of issuance;

(4) Extensions, enlargements, additions and improvements;

(5) Architectural, engineering, financial and legal services;

(6) Plans, specifications, studies, surveys and estimates of cost and of revenues;

(7) Administrative expenses necessary or incident to determining to proceed with the infrastructure improvements; and

(8) Other expenses as may be necessary or incident to the construction, acquisition, financing and operation of the infrastructure improvements including administrative expenses charged to collect and/or administer the tax revenues.

- (d) 'County' or 'county' means New Castle County, Kent County or Sussex County.
- (e) 'Investment Level' means a designation by the Office of State Planning Coordination regarding planned infrastructure and state investment in the area so designated and ranging from level 1 through level 4.
- (f) 'Local Government' means a County or Municipality.
- (g) 'Special Development District Master Plan' (SDDMP) means a document and maps prepared to guide the implementation of a Special Development District (SDD). The purpose of the SDDMP is to define infrastructure needs for the SDD area (including, but not limited to: sewer; water; transportation; and stormwater management) as well as to define financing mechanisms and the percentage of contributions required from each parcel participating in the SDD. The SDDMP shall consider land use and the cumulative impacts and infrastructure needs of existing and planned development in the area in order to define the maximum permissible development potential and the resulting infrastructure requirements for all parcels participating in the SDD.
- (h) 'Municipality' means any town or city located within the State.
- (i) 'TDR' shall mean transfer of development rights.
- (j) 'TDR Unit' shall mean a residential development unit or equivalent in accordance with the local government's TDR program, which is acquired from the Bank or from a private property owner and utilized by the owner of the Receiving Parcel to increase development density. A TDR unit shall equal one residential unit. The bank board for each County, as enabled by this subchapter, shall determine the conversion value of a TDR unit that is to be used for non-residential density transfers, which shall be between 3,000 to 6,000 square feet of building space per acre of restricted land.

§9152. Creation of Special Development Districts.

A Special Development District may be created by ordinance of a Local Government in (1) any growth zone in any County or Municipal comprehensive plan that has been certified in accordance with Title 29, Chapter 91; or (2) any parcel(s) in a county or municipality as consistent with the certified county comprehensive plan and the Strategies for State Policies and Spending.

387 §9153. Base Density and TDR's.

388 (a) Notwithstanding any other regulation or restriction of a Local Government, all
389 Special Development Districts shall have a base gross density (calculated based upon the
390 total acreage of the site) as follows:

391 (1) As part of the Special Development District, the base density shall be the
392 existing county residential density, regardless of whether the parcel remains in the
393 county jurisdiction or is annexed into a municipality. Projects that are intended to
394 be primarily non-residential in nature may be placed into an appropriate non-
395 residential zoning district.

396 (2) As part of each Special Development District, a property owner or owners
397 must purchase or otherwise obtain TDR's so that overall density of property in the
398 District shall increase over the base gross density by at least 2 residential units
399 per acre and shall be at least 4 residential units per acre for the residential portion
400 of the SDD. The property owner or owners must purchase or otherwise obtain
401 TDRs so that at least two TDR units are utilized per acre for any non-residential
402 portion of the receiving parcel(s). TDR's may be obtained through Subchapter III
403 hereof, or by private purchase, provided that if by private purchase, the property
404 transferring development rights is restricted by preservation easement duly
405 recorded in the appropriate Recorder of Deeds' Office in accordance with the
406 applicable rules and regulations of the Local Government in which the SDD is
407 located. The restricted property need not be in the same jurisdiction as the SDD.

408 (b) A Special Development District shall include both residential and non-residential
409 uses.

410
411 §9154. Infrastructure Master Plan for Special Development Districts.

412 Property in a Special Development District shall be developed in accordance with a Master Plan
413 adopted by the Local Government at the time of the creation of the SDD. The Master Plan shall
414 set forth the maximum permitted development for each parcel in the SDD and, based upon such
415 development, the amount of infrastructure resources and/or improvements (sewer, highway and
416 road capacity, water, and other utilities) needed for the development of such SDD. The Master
417 Plan shall also set forth the percentage contribution each parcel owner is to pay towards the cost

of the infrastructure resources and improvements. To the extent infrastructure improvements will alleviate existing shortfalls or provide excess capacity beyond that required by the parcels making up the SDD, the cost of such alleviation or excess capacity shall be paid by the Local Government (in the case of services provided by the Local Government such as sewer) or by the Delaware Department of Transportation (in the case of road and highway improvements). The Master Plan shall be required to address existing infrastructure shortfalls but the SDD shall only be required to fund additional infrastructure necessary for the planned development of the District. The Master Plan shall allow for multi-jurisdictional funding of infrastructure through the use of memoranda of agreements. The Infrastructure Master Plan shall be required to be reviewed through the pre-application review process described in Title 29, Chapter 92.

§9155. Infrastructure Development Agreements and Special Development Districts.

(a) The cost of the infrastructure improvements called for in the Master Plan for a Special Development District may be paid for in one of two ways:

(1) pursuant to a private agreement (such as multi-jurisdictional memoranda of agreements) entered into between all of the property owners and the Local Government(s) and, to the extent road or highway improvements to any roads which are the responsibility of the Department of Transportation; or,

(2) For purposes of this subchapter and the creation of SDD's, any local government is hereby authorized to develop financial mechanisms for infrastructure funding as described in Title 22, Chapter 18.

(b) At the time of creation of the Special Development District by the Local Government, each property owner in the District shall sign an agreement (the "Infrastructure Development Agreement") with the Local Government. The Infrastructure Development Agreement shall set forth the infrastructure required by the Master Plan (if known) or the process by which the infrastructure needs will be determined. It shall also set forth the manner of payment for such infrastructure. Where the financing option set forth in subsection (a)(1) above is to be used, the Master Agreement shall also set forth the timing and method for payments required for the infrastructure to be built. Where a Special Development District is to be used, the Master Agreement shall so state and the requirements of 22 Del. C. §1803(a)(1) and (2) are deemed waived. The agreement (or a

memorandum thereof) shall be recorded with the appropriate Recorder of Deeds and shall bind future property owners.

(c) As part of the Infrastructure Development Agreement, a property owner or property owners may agree to construct all or a portion of the infrastructure called for under the Master Plan, and shall receive a credit against payments for infrastructure, the terms and conditions thereof to be set forth in the agreement.

§9156. Land Use Approval Process in a Special Development District.

Notwithstanding the requirements of a Local Government which might otherwise be applicable, no proposed development for a parcel in a Special Development District which does not exceed the development permitted for such parcel in the Master Plan shall

- (i) be subject to pre-application review process under Title 29, Chapter 92;
 - (ii) be required to prepare or submit a traffic impact study; and
 - (iii) be subject to any limitations on the amount of development otherwise applicable to the proposed development due to limited amounts of infrastructure or utility capacity.
- Development within a SDD may be phased.

§9157. Conflict with Existing Charters.

To the extent a municipal charter is in conflict with the provisions of Subchapter IV of this Chapter on the date of enactment of this title, the municipal charter shall be controlling as applied to that particular municipality. This Act as applied to all other municipalities shall remain in effect and shall be applicable to all projects initiated after the date of enactment of this title.

Section 4. Amend Title 9, Chapter 26, §2653, (a), (3) of the Delaware Code by deleting the stricken text as follows:

“To implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations or elements thereof. In furtherance of the authority to adopt, amend and implement comprehensive plans or elements or portions thereof to guide and control future growth, counties are expressly granted the authority to develop and adopt regulations governing the transfer of development rights from identified residential and nonresidential districts, zones

481 or parcels of land to residential and nonresidential districts, zones, or parcels or areas designated
482 to receive such development rights; ~~provided that such receiving districts, zones or areas are~~
483 ~~within the same planning district as defined by the county.~~ Such regulations may provide for the
484 establishment of development right banking. Whenever a county exercises its authority to
485 provide for the transfer of development rights it shall:"

SYNOPSIS

This bill provides two major components for better land use planning and development in Delaware. First, the bill sets up a process for the transfer of development rights ("TDR") and sets up a TDR bank. Second, the bill provides for the creation of Special Development Districts--districts which are created to provide for financing of infrastructure needed for the development of the District and which must utilize TDR's. These two components working together should address several problems. They will help save open space by encouraging the transfer of development rights and by providing for higher density where development does occur. They will also provide more funding for the construction of needed infrastructure so that this burden does not fall entirely on existing property owners.